Reserved

Civil Misc. Writ Petition No. 650(M/B) of 2001

Anil Kumar ..... Petitioner

Vs.

State of Uttaranchal and others..... Respondents

Hon. P.C. Verma, J.
Hon. M.C. Jain, J.

(Delivered by Hon. M.C. Jain, J.)

The petitioner is a practicing lawyer at Rishikesh, District Dehradun and has challenged the Notification dated 23.5.2001 issued by the respondent no.1 appointing the respondent no.3 as a Notary for Tehsil Rishikesh. He has also prayed for a writ of mandamus directing the respondent no. 1 to appoint him as Notary for Tehsil Rishikesh.

The respondent no. 1 took a decision to create an additional post of a Notary for Tehsil Rishikesh and in pursuance of such Government decision a notice dated 23.4.2001 was issued by the respondent no.2(District Judge, Dehradun) inviting applications in the prescribed format by 10.5.2001. Nine candidates including the petitioner and respondent no.3 submitted applications. The petitioner was a candidate of backward class practicing at Rishikesh since 1985 and, according to him, he was the only candidate eligible to be appointed as Notary. As regards respondent no.3, it is contended that he is not a practicing Advocate in Tehsil Rishikesh. Nor he actually resides there. In fact, he is a resident of Tehri Garhwal district and practices there. He is also a member of ruling B.J.P. and has great political affinity and influence in the B.J.P. circle. He is said to have manoeuvred his appointment as Notary by exercising undue influence on the respondent no.1. The respondent no.2 did not follow the

relevant rules and only forwarded the applications of the petitioner and respondent no.3 alongwith other applicants without making any recommendation as enjoined upon him under Rule 7 and without making any inquiry and without inviting any objection under Rule 6 of the Notaries Rule 1956. The petition is founded on these allegations, seeking the relief as mentioned in the opening part of the judgment.

We have heard learned counsel for the petitioner, learned S.C. and learned counsel for the respondent no.3 whose appointment as Notary has been challenged. The learned S.C. has also placed before us the record concerning the appointment of Notary. The submission from the side of the respondent no.3 is that he is a practicing Advocate in Tehsil Rishikesh since his registration as such and he is residing at Rishikesh since his student life. He, thus, justifies his appointment as Notary.

We find that the respondent no.2 –competent authority (District Judge, Dehradun) simple forwarded the applications alongwith documents of the nine candidates (including the petitioner and respondent no.3) to the respondent no.1 without any application of mind and without recording his opinion separately in respect of each candidate after complying with the requirements of relevant rules. He also does not appear to have made any inquiry as to the place of residence of each candidate and without inviting objections as per requirement of rules. The truth of the matter is that the respondent no.2 just forwarded memorials of the nine candidates including the petitioner and respondent no.3 alongwith other documents to the State Government for appropriate action. It may be pointed out that appointment of Notary is governed by provisions of Notaries Act, 1952 and the Rules framed thereunder i.e. Notaries Rules 1956. Under the Rules, for appointment of Notary, a candidate is required

to submit his application in the form of memorial addressed to such officer or authority of the appropriate Government as that Government may by Notification in the official gazette designate in this behalf. Such officer or authority is known as competent authority. The District Judge is the competent authority. For being eligible for appointment as Notary, one has to be a legal practitioner atleast for ten years and various other categories of people have also been made eligible for appointment as Notary as per Rule 3. On the submission of the memorials, the competent authority is required to examine the same and in case he is satisfied that the applicant does not possess the qualification as specified in Rule 3 of the Rules, he is obliged to reject such memorial. He is also obliged to reject memorials of such applicants whose previous application for appointment of Notary has been rejected within six months. If the competent authority does not reject the application under sub-rule (1) of Rule 6, then he, in his discretion, may invite objection, if any, to the appointment of the candidates from any Bar Council, Bar Association, incorporated law society or other authority in the area.

Rule 7 of the Rules confers powers on the competent authority to make recommendation to the appropriate Government after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making representation against the objections, if any. Rule 7 may be reproduced below for the facility of appreciation.

> **“7. Recommendation of the competent authority, -**
> (1) the competent authority shall, after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received within the time fixed under sub-rule (2) of Rule 6, make a report to the appropriate Government recommending either that the application may be allowed for the whole of any part of the area to which the application relates or that it may be rejected.

(2) The competent authority shall also make his recommendation in the report under sub-rule (1) regarding the persons by whom the whole or any part of the costs of the application including cost of hearing, if any, shall be borne.

(3) In making his recommendation under sub-rule (1), the competent authority shall have due regard to the following matters, namely:-

(a) whether the applicant ordinarily resides in the area in which he proposes to practice as notary;

(b) whether, having regard to the commercial importance of the area in which the applicant proposes to practice and the number of existing notaries practicing in the area it is necessary to appoint any additional notaries for the area;

(c) whether, having regard to his knowledge and experience of commercial law and the nature of the objections, if any, raised in respect of his appointment as a notary and in case of a legal practitioner also to the extent of his practice, the applicant is fit to be appointed as a notary;

(d) where the applicant belongs to a firm of legal practitioners, whether having regard to the number of existing notaries in that firm, it is proper and necessary to appoint any additional notary from that firm, and

(e) where applications from other applicants in respect of the area are pending, whether the applicant is more suitable than such other applicants.**”**

It is clear from the reading of Rule 7 reproduced above that the competent authority is required to make recommendation either that the application may be allowed for whole or any part of the area to which the application relates or that it may be rejected. While making recommendation the competent authority is also required to give due regard to various aspects mentioned in clause (a) to (e). On receipt of the report of the competent authority, the appropriate government is required to consider the same and make appointment of the Notaries.

Obviously, in the present case, above requirements of the relevant rules have not been complied with by the competent

authority. No inquiry has been made by him. Nor did he record his comments in respect of each candidate. He simply forwarded the memorials and documents submitted by the candidates to the respondent no.1 with a blanket observation that no complaint had been received against any of them. Really speaking, it can not be termed or construed to be the recommendation of the competent authority. There has been no application of mind at all. We are of the view that the competent authority did not discharge his statutory obligation.

In the result the writ petition is allowed. The Notification dated 23.5.2001 (Annexure 4 to the writ petition) appointing respondent no.3 as Notary is quashed. The respondent nos. 1 and 2 are directed to proceed with the matter in accordance with law and relevant rules afresh.

There will be no order as to costs.

(P.C. Verma, J.) **(M.C. Jain, J.)**

July 13, 2001